

2023

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Recommended Citation

Anirudh Kumar, 'Mediation Mechanism: The Right Way To Adjudicate Criminal Cases?' (2023) 2 IJHRLR 23-40.

Available at www.humanrightlawreview.in/vol-2-issue-3/.

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MEDIATION MECHANISM: THE RIGHT WAY TO ADJUDICATE CRIMINAL CASES?

Anirudh Kumar¹

ABSTRACT

From retribution or deterrent to reformation, the world has witnessed a huge paradigm shift from the yesteryear practice of punishing the criminals to reforming them and making them the socially acceptable people. Mediation as a process goes into a lot of psychological and moral aspects of a person's life and will allow for the person to express the emotions, thereby bringing in a personal touch while adjudicating a case. The lack of rigidity and presence of flexibility will always bring an equitable adjudication. This is with regards to civil disputes. Crimes however fall under actions against the state i.e. they do not constitute an offence against a person in particular. In such circumstances, courts have a skewed view in not allowing for a crime to be determined on the basis of state of mind but only on the basis of rigid substantive and procedural laws present. This paper focuses on why criminal cases are better dealt by mediation and not through rigid procedures of the court because the essence of this paper is to make people realize crimes are not just mere spur of the moment actions but have huge psychological and psychiatric reasons behind the commission. Mediation will ensure that personal, social and other necessary aspects are discussed and depending on the background of commission, the commission and the outcome of commission of the crime. This will therefore change the society's perception on criminals and why they commit crime and will also make people more aware as to how Mediation can be the best and the right adjudicatory mechanism for criminal cases.

KEYWORDS

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Victim Offender Mediation, Reformatory Justice System, Alternative Dispute Resolution, Theories of Punishments, Human

INTRODUCTION

Alternative Dispute Resolution i.e. ADR is the process of adjudicating disputes outside the court in a manner which is informal in nature. ADR serves as a tool in enabling the courts to adjudicate disputes faster because in most cases, the settled dispute would be the one which goes to the court only for execution purposes. Mediation is a form of ADR which is the least formal and the most personal in terms of the psychological touch that it has with the parties involved. It creates a holistic environment for the parties present and it brings them together creating a win-win situation for everyone present here. The reason why Mediation as an ADR mechanism exists is two-fold:

- a. Cost effective;
- b. Time effective.

The problem with the modern day Indian Judicial System is the increase in the pendency of cases due to which adjudication of disputes has become an extremely time consuming process thereby many people losing faith with the judicial system of the state. To cancel out this issue and to make sure that people can get justice in one or the other way, ADR mechanisms are present. This is okay when it comes to adjudicating contractual, matrimonial and other civil disputes. But the biggest hindrance comes with regards to criminal cases. Indian Judicial System does not allow for criminal cases to be adjudicated through ADR mechanisms. A system which has time and again promoted the usage of ADR, especially mediation mechanism, it feels like the Judiciary is juxtaposing itself by not allowing criminal cases, especially cognizable offences into the ambit of ADR adjudication. A lot of issues have risen because of this which shall be discussed in the further parts of the

paper.

HISTORY OF MEDIATION IN INDIA: A BRIEF OUTLINE

Prior to the onset of the erstwhile British and the other East India Companies of the various countries, mediation was the sole adjudicating mechanism for any dispute, be it civil or criminal. The Panchayat System was the flag bearer of mediation in India and the village head, also known as the Sarpanch or the Naatamai used to mediate the disputes between the parties and would create a holistic environment so that an amicable dispute settlement is brought. This system continued even after the onset of the Janapadas, Mahajanapadas, Delhi Sultanate and the Mughals. In fact, the Mughals had a system similar to that of the current American system wherein if there is not a settlement brought out by Mediation, then it will be appealed to the courts i.e. in case of Mughals, it was Caste Courts or the court of the Diwans whereas in America, it goes to the Civil Courts. The onset of the East India Companies and the subsequent takeover of the rule of India by the British Empire, adversarial system of adjudication came into place which is the present, primary system of dispute resolution. But since the concept of *Vasudaiva Kutumbakam* is ingrained into the DNA of Indians, mediation came into picture once again and in the year 1996, under the aegis of the Late Hon'ble Mr. Justice A.M. Ahmadi, the then Chief Justice of India brought the Institute for the Study and Development of Legal Studies from the USA and the study conducted by the institute discussed different methods to reduce the high pendency rate in India, of which ADR Mechanisms such as Arbitration, Conciliation, Mediation etc. were a part of it. Taking the recommendations into account, Sec. 89 of the Code of Civil Procedure, 1908 was amended in the year 1999 and it brought into provided for courts to empower to refer a case and adjudicate it through any of the ADR mechanisms given in the section. Moving forward to the year 2005,

under the aegis of Late Hon'ble Mr. Justice R.C. Lahoti, the then CJI and Hon'ble Mr. Justice N.S. Hegde, the chairman of the Mediation and Conciliation Project of the Supreme Court of India launched intensive training sessions to mediators and the first batch of trainees underwent 40 hours of intense practical sessions. Further training sessions bringing in people from different academic background and mediation was thus promoted as a dispute resolution mechanism all over India to adjudicate civil disputes. ADR was not extended to criminal cases however. An attempt was made in **V. Mohan v. State**² wherein the Hon'ble High Court of Judicature at Madras had referred a rape case for mediation but ultimately, the Supreme Court overruled this order. This brings to the question why cannot crimes be brought under the ambit of ADR for which we must look into what is crime, its implication on the society, the theories of punishment and why mediation for criminal disputes.

CRIME: A PERSPECTIVE

From a legal point of view, crimes can be categorized as acts that are against the order of law i.e. illegal in nature. When looked at from a non-legal point of view, it can be categorized as acts that are against the order of nature. The Ancient Hindu Text Manusmriti divides crimes into 18 categories which are (1) non-payment of debts, (2) deposit and pledge, (3) sale without ownership, (4) concerns among partners, and (5) resumption of gifts (6) Non-payment of wages, (7) non-performance of agreements, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and his servants, (10) disputes relating to boundaries, (11) assault, (12) defamation, (13) theft, (14) robbery, (15) adultery (16) Duties relating to husband and wife, (17) partition and (18) gambling and betting.³ In the modern day Indian's lives, the same

² M.P. 2 of 2014 in CrI. A. 402 of 2014, Madras High Court.

³ *Manusmriti: A critique of the Criminal Justice tenets in the ancient Indian Hindu code.* Available at <https://www.scribd.com/document/200567021/Manu-Smriti#>.

are regarded as crimes and the ambit of some of the categories have been widened, narrowed or have been struck down by judicial interpretations.⁴

While moving on to the next part of the question which is what kind of impact does these crimes have on the everyday person's life, the following must first be looked at and only after they are addressed will the main question be able to be answered.

CAUSES OF CRIME

The first aspect that we are going to deal with herein is societal causes. Society⁵ in the current day is largely determined by the money at hand. Stratification of the society that we live in is the first and the most important reason for a crime to be committed and people belonging to the lower strata, often looking up to the lavish lifestyle that people belonging to the higher strata get into making wrong decisions starting from petty theft to gruesome acts like rape and murder, all so that they can experience some form of luxury at point in their lives. Schools often forget to teach basic aspects of life such as satisfaction and acceptance and this in turn pushes people to commit crimes.

The second aspect that is being dealt with herein is poverty. In a paper published by *Park Place Economist Journal*⁶, it was given that cities where the quantity of crimes are high are on an average have 22.25% of people living belonging to the poor sections of the society. Therefore, poverty as a reason for commission of further substantiates the first aspect. From an Indian perspective, an article published in the *World*

⁴ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; Joseph Shine v. Union of India, (2019) 3 SCC 39; Vijay Madanlal Choudhary v. Union of India, (2022) SCC OnLine SC 929.

⁵ Athira R Nair (2022) *Causes of crime*, iPleaders. Available at: <https://blog.ipleaders.in/causes-of-crime/>.

⁶ Quednau, Joseph (2021) "How are violent crime rates in U.S. cities affected by poverty?," *The Park Place Economist: Vol. 28* Available at: <https://digitalcommons.iwu.edu/parkplace/vol28/iss1/8>.

*Food Prize, Michigan Youth Institute*⁷ in the year 2017 reported that change in organizational attitude to jump the hurdle and corruption have been the key causes for poverty in India, in the World. This therefore indicates that people would not hesitate to get into committing anything extreme just so that they would be able meet their daily needs.

The third aspect that would be dealt with is what is the most severe of reasons for a crime to be committed, psychological aspect. The reason why it is the most severe of reasons is because it is the major determinant as to whether a person would commit a crime or not. The first sub-aspect herein is:

- a. **Habits:** One who is psychologically tuned to do some things would automatically resort to doing such things involuntarily, without any hesitation. Like that, a person who enters into the world of crimes would automatically commit one without thinking of the consequences to the parties that are affected by it;
- b. **Peer Groups:** A person who is surrounded by a group of people who commit crimes would tend to lean towards committing a crime because of the pressure that arises from being a part of such groups;
- c. **Past Incidents:** Movies and TV Shows depict this reality in the most realistic way possible. Persons who have been subjected to traumas, injustice and could not find the right remedies often push them towards committing crimes.

Other popular aspects would be politics, religion etc. The example of the Godhra Train Burning Incident and the subsequent riots in the state of Gujarat would fall under both religious and political categories of the causes of crimes. People took up arms and ammunition for both religious and political purposes and these two would also come under

⁷ Neha Middela (2017) "Corruption and Food Security in India", Available at: <https://www.canr.msu.edu/news/corruption-and-food-security-in-india>.

the ambit of aspects under which a person commits a crime.

EFFECTS OF CRIME

Having seen the causes, there must surely be harmful effects that would arise out of the negative actions of a person. They would include but are not limited to the following⁸:

- a. **Physical Harm:** These would include from a simple hurt->grievous hurt->death;
- b. **Emotional/Psychological Harm:** These would include curable issues such as Obsessive Compulsive Disorders to sometimes adverse issues such as Schizophrenia and Post Traumatic Stress Disorder;
- c. **Financial/Economic Harm:** Losses incurred in terms of money;
- d. **Societal Harm:** People would be scared stepping out of their houses, the streets would be filled with an aura of fear;

Now, having had a brief look at how a crime affects the morale, the very existence of the society, it must be understood that in order to curb crimes from happening there are many punishments involved which are categorized as follows:

- a. **Retributive Theory of Punishment:** In simple terms it is an eye for an eye, ear for an ear and life for a life. This theory is in line with Indian thought process wherein the society works in a manner wherein if a person commits a crime, then he must face the equal repercussion of what he had caused, more or less aligning with the Newtonian Principle of *every action has an equal and opposite reaction*. The biggest example of people demanding

⁸ *Stripe, N. (2022) The impact of crime on victims and society: March 2022, The impact of crime on victims and society - Office for National Statistics. Office for National Statistics. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/theimpactofcrimeonvictimsandsociety/march2022>.*

for retribution in recent days is prior to the judgement of *Vinay Sharma v. Union of India*⁹, popularly known as the Nirbhaya Case;

- b. **Deterrent Theory:** Deter means to block the person. This theory of punishment creates a deterrent, a blockade for a person from either committing a crime or from further committing a crime. This theory says that if the punishment is severe, certain and swift, then the person who is even thinking of committing a crime would be deterred from committing it due to him realizing the consequences that await him;
 - i. **Preventive Theory:** Sometimes considered as a separate theory in itself, this theory is also deterrent in nature because its main objective is to prevent the person from committing the crime. This prevention can be categorized into pre and post. Pre in this context prevents the person from committing a crime by instilling the necessary behavioral aspects to make him a societally acceptable person. Post refers to usage of methods such as detention in the form of imprisonment, house arrest etc.

REFORMATIVE THEORY OF PUNISHMENT: THE CLEANEST PATH

*“Every saint has a past and every sinner a future, never write off the man wearing the criminal attire but remove the dangerous degeneracy in him, restore his retarded human potential by holistic healing of his fevered, fatigued or frustrated inside and by repairing the repressive, though hidden, injustice of the social order which is vicariously guilty of the criminal behavior of many innocent convicts. Law must rise with life and jurisprudence responds to humanism.”*¹⁰

Late Hon’ble Mr. Justice V.R. Krishna Iyer, also known as the father of

⁹ (2020) 4 SCC 391.

¹⁰ Rajendra Prasad v. State of Uttar Pradesh, AIR 1979 SC 916.

Reformative Justice in India made this observation while dealing with a case regarding the circumstances when capital punishment can be imposed. This theory seeks to address the root causes of crimes such as poverty, lack of education etc. by providing the offenders with all the necessary resources and requirements to make them acceptable members of the society again. The resources include but are not limited to psychological support, counselling, vocational training and education and other necessary help required to make them a fit member of the society. This theory represents a paradigm shift towards a rehabilitative criminal justice system.

Having looked at different aspects of criminal law, it must be understood that Mediation as a dispute resolution mechanism and Reformative Theory go hand in hand. Mediation aims to address the underlying issues within the offender that may have led to him develop criminal behavior. Mediation can provide an opportunity for the offender to understand the impact of their actions on the victim and society as a whole. Through mediation, the offender will be able to take responsibility for his/her actions, would be able to feel remorse, and make amends for the harm caused. By doing so, the offender would definitely be able to understand the impact of the actions and would put in maximum efforts to not commit any offence in the future. Mediation further helps to restore the relationship between the offender and the victim, which will further help in restoring the relationship that the offender has with the society, thereby reducing the chance of commission of crimes in the future.

MEDIATION IN CRIMINAL LAW: A UNITED STATES PERSPECTIVE

Criminal mediation has grown beyond its original status as a vague concept focused on misdemeanors, juveniles, and victim-offender programs, to now address serious violent crimes as well.

The *Idaho Law Review*¹¹ has dealt with this. Going into the major details of this paper, it first divides criminal mediation into two parts:

- a. **Victim Offender Mediation:** A flag bearer in reformatory theory of punishment, in this type of mediation, the offender and the victim (in most cases) come together in a safe space and share the thoughts on the crime, how much it has affected the victim and what are the ways in which the offender can offer reparations to the victim. This type of mediation has become a huge success and has been a role model in many countries. The major focus on this type of mediation is that this focuses on emphasizing how the crime committed affects the victim as opposed to the state. This in turn ensures the focus on how one act creates adverse effects to the victim. Deborah Gartzke Goolsby in her work¹² advocated the usage of this type of mediation in simple rape cases wherein the victim and the offender are known to each other prior to the commission of rape. Before moving further, it is important to point out the distinction that the author had made against simple and aggravated rape case. Aggravated rape in her view defines such rapes with the involvement of violence, many assailants and/or the victim and the offender being complete strangers to each other. She goes on to define simple rape as either *acquaintance rape* which refers to rape occurring wherein the parties knew each other prior to the incident or as *date rape* i.e. the assault occurs in situations wherein the victim and the offender are in a socially acceptable relationship which promotes sexual intimacy and in there the intercourse happens without the consent of the victim. The reason why the author had made this important distinction is because in her view, though the amount

¹¹ *Remarks on case-management criminal mediation - University of Idaho*. Available at: https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=1203&context=faculty_scholarship (Accessed: May 1, 2023).

¹² *Using Mediation In Cases Of Simple Rape*, 47 *Wash. & Lee L. Rev.* 1183 (1990). Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol47/iss4/14>.

of aggravated rape is significantly lesser than that of simple rape, the victims of aggravated rape are the ones who report more frequently about the crime that has taken place. Per contra, simple rape happens within two individuals who are known to each other. This in turn causes a heavy emotional turmoil to the victim due to the past presence of factors such as trust, confidence and the sense of feeling safe in the presence of the offender. The reason why mediation in such cases would be better is due to provision of quick, responsive and a humane approach to the parties which in turn would encourage healing and effective dispute resolution. Furthermore, the *Office of Victims of Crime*¹³ department of the government through empirical studies conducted by it has held that majority of victims who are given the opportunity for mediation and deeply engage in the process, with the victims participating from 60 to 70 percent.

- b. **Case Management Mediation:** The major distinction between the former and this is that in this type model, the focus is on the settlement side as against the resolution/restoration side in Victim Oriented Mediation. This mediation focuses more on the retributive theory of punishment wherein as the description suggests, decides only the quantum of the punishment and does not necessarily involve in depth mediation. Furthermore, it should also be let known that unlike the victim's direct participation in Victim Oriented Mediation, the office of the public prosecutor supersedes the victim and his/her private prosecutor as the main reason is that a crime is an offence against the state. Joseph Gittler in *Expanding the Role of the Victim in a Criminal Action: An Overview of Issues and Problems*¹⁴ prior to the

¹³ *Victim-Offender Mediation: A National Perspective; Guidelines for victim-sensitive victim-offender mediation: Restorative Justice Through Dialogue*. Available at: https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/guide4.html (Accessed: May 2, 2023).

¹⁴ *Josephine Gittler Expanding the Role of the Victim in a Criminal Action: An Overview*

independence wherein the country was under the rule of the colonizers, the prosecution of crime was private because a crime was an offence only against the victim and the stakeholders being the victim, the offender and any other interested party. In this type of mediation, the State is the client of the public prosecutor giving rise to the problem that he almost has full autonomy in deciding the quantum of sentencing, thereby in most cases negating the needs of the victims. This therefore shows that this type of mediation is just like any other criminal case because it does not bring all the aspects of mediation, the most important being the win-win situation that is created.

VICTIM OFFENDER MEDIATION: THE STEP FORWARD

Before going into the merits and the reasons as to why VOM should be the norm, the procedure for conducting it is as follows:

- a. **Introduction:** The mediator introduces the session by giving an opening statement wherein he gives reasons as to why this session is in place and how the session is going to go ahead;
- b. **Victim-Offender Statements:** Separate statements are given by the victim and the offender respectively wherein they give their versions of the story and how it has impacted them respectively;
- c. **Mediator's Review:** The mediator then consolidates the statements made by the victim and the offender and then proceeds to explain the feelings behind the actions of the offender and also explain the gut wrenching feeling of the victim as well;
- d. **Agreement and Resolution:** The parties then draft a written agreement after which a resolution is taken up by the offender. This is then lastly followed by a closing statement made by the mediator once the sessions are over.

Having seen from a theoretical perspective as to how Victim Offender Mediation works, explanation of the practical implications along with the advantages that it has must be explained¹⁵. From a victim's point of view, they get to meet the offender and will further have the opportunity to discuss the impact of the offence committed that it has on them such as physical, emotional and financial impacts. Furthermore, it must be understood that the victim will also have the opportunity to receive an assurance that what happened was not their fault and can get out of the resentment that it has caused to them thereby reducing the burden that they have on themselves. They will also be able to see the offender from a new perspective i.e. as a human being who is capable of changing. What must be understood is that in traditional criminal case adjudication, the victim's gain can only be equity whereas the gains made here include mental peace, equity, monetary reparations and other such benefits. From the perspective of the offender, he can get a true picture of the consequences of his actions and will learn the sufferings that the victim underwent because of the actions. Because of this, they would be able to make reparations to the victim and the society. The main benefit that VOM has for the offender is that he/she gets a chance to meet the victim and apologize directly, explain the circumstances under which the crime took place and by doing these, the judge may consider in reducing the quantum of sentence.

VOM offers the offenders and the victims various combined benefits such as humanizing the crime committed, reduction of fear and pain and also overcoming psychological barriers. Studies have further indicated that VOM sessions are more effective in cases wherein the crime committed is severe in nature. With the presence of a safe and a comfortable environment, VOM offers the offender and the victim a chance to voice out their opinions and their opinions are more

¹⁵ *Criminal mediation is in the BASF of the Criminal Justice System*. Available at: <https://core.ac.uk/download/pdf/159556918.pdf> (Accessed: April 27, 2023).

adequately taken into consideration and the outcome from such sessions are more fair than in a traditional criminal case adjudication. Therefore, it can be understood that VOM will definitely offer the victim and the offender a fair chance to represent themselves and the outcome will also result in the reduction of serious crimes such as rapes, murders etc.

OTHER COUNTRIES' STANCE ON VICTIM OFFENDER MEDIATION

Nordic Countries: Countries such as Sweden, Denmark, Norway and other such countries have promoted the usage of Restorative Justice and they have been at the forefront of promoting VOM in their countries. Sweden focuses on VOM towards people aged between 8-21 years old who had committed a crime, inclusive of a petty to serious offences. The National Council for Crime Prevention had undertaken a study wherein they opined that mediation was best undertaken at the grass-root municipality levels. They further went on to say that VOM was a measure that must be used in almost as cases wherein the offender was aged 8-18 (now 8-21) because of many advantages that it posed. Currently, the main laws in governance for VOM i.e. *The Social Service Act, 2008* and *Law on Special Provisions Concerning Young Offenders, 2007* and *The Mediation Act, 2004*.

Canada: The Department of Correctional Service of Canada's Restorative Justice¹⁶ provided statistical analysis giving out the number of VOMs that have taken place since 1992-2016 wherein the referrals were demarcated and categorized as follows:

- a. **Victim Initiated Referrals:** 656 cases;

¹⁶ Government of Canada, C.S.of C. (2012) *Restorative opportunities - Victim-Offender Mediation Services*, Government of Canada, Correctional Service of Canada, Communications and Citizen Engagement Sector, Restorative Justice. Available at: [https://www.csc-scc.gc.ca/restorative-justice/003005-1001-eng.shtml#:~:text=Victim%2DOffender%20Mediation%20\(VOM\),the%20prevention%20of%20future%20crime.](https://www.csc-scc.gc.ca/restorative-justice/003005-1001-eng.shtml#:~:text=Victim%2DOffender%20Mediation%20(VOM),the%20prevention%20of%20future%20crime.)

- b. **Institutional Initiated Referrals:** 1149 cases;
- c. **Other/Unknown:** 220 cases.

Victims and offenders who participated in the programs have experienced satisfaction and they have often praised the mediators for their level of commitment and professionalism. Victims have found a sense of closure and offenders have come out with increased sense of empathy towards the victim and have repented the consequences of the crimes that have been committed by them.

United Kingdom: Though United Kingdom does not have any law specifically related to victim-offender mediation, there have been some measures that are restorative for victims or offenders, but unfortunately not for both. Due to the absence of mandated standards for victim-offender mediation, practices related to it are varied. Some areas within the territory use victim-offender mediation, while others use conferencing and some use both as well. In some places, VOMs are often used in cases for juveniles, some for adults and some for both. In most cases, they are managed by the probation services. The police also help the probation agencies in such cases. Due to no presence of a fixed law, VOMs have not had a solid ground to establish themselves.

INDIA AND ITS APPROACH TOWARDS MEDIATION IN CRIMINAL CASES

The Hon'ble Supreme Court of India in the year 2022¹⁷ referred a POCSO Case to mediation after hearing that the parties wanted to privately settle the matter between themselves. Though this was a step towards pushing for mediation in criminal cases, it ultimately failed. This therefore takes us to the question as to why mediation is not used as an adjudicating mechanism for criminal cases in India.

¹⁷ S.D. (2022) SC lets parties go for mediation in POCSO case: Mumbai News - Times of India, *The Times of India* Feb 11, 2022, TOI. Available at: <https://timesofindia.indiatimes.com/city/mumbai/sc-lets-parties-go-for-mediation-in-pocso-case/articleshow/89489163.cms>.

Mediation is not usually used in adjudicating criminal cases because criminal cases in India are considered to be offenses against society as a whole, rather than just a dispute between two parties according to the statutes that are present. In criminal cases, the state acts as the prosecutor and represents the interests of society in punishing the offender for breaking the law. Furthermore, the criminal justice system in India has set procedures and laws that are present to ensure that the rights of both the defendant and the victim are protected, and that justice is served. These procedures include the right to a fair trial¹⁸, the right to legal representation¹⁹, and the presumption of innocence until proven guilty. This again leads us to another question that is whether mediation will be used in criminal cases in the future. Before answering that, we must understand that mediation supports reformatory theory of punishment. The reformatory theory of punishment emphasizes the rehabilitation of offenders and seeks to address the root causes of criminal behavior rather than simply punishing offenders for their crimes. Likewise, mediation is a process that aims to address the underlying issues and conflicts that may have led to the criminal behavior and helps in reforming the offender by making him/her understand the consequences of the actions. Mediation further provides opportunities for the offender to understand the impact of their actions on the victim and society as a whole. Through mediation, it is very likely that the offender takes responsibility for their actions, express remorse, and work towards making amends and undertake reparations for the harm they have caused. By doing so, the offender will definitely understand the impact of the actions and be less likely to commit any further crimes in the future. It is however important to note that mediation is not a replacement for traditional forms of punishment and should not be used as the sole means of addressing criminal cases. It can however be seen as a complementary approach that supports the

¹⁸ Hussainara Khatun v. State of Bihar, AIR 1979 SC 1369.

¹⁹ M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

reformative theory of punishment by addressing the underlying causes of criminal behavior and promoting the rehabilitation of offenders.

Mediation is a confidential process. It allows the parties to have discussions on sensitive issues without fear of public exposure or judgement. This can be particularly important in cases where the dispute involves certain relationships that the parties want to preserve. Furthermore, the mediator works towards facilitating communication and understanding between the parties and not rather make a decision based on legal rules and procedures.

While mediation may not necessarily be the best dispute resolution mechanism in every situation, it offers many advantages that can make it a valuable and effective option for many types of disputes. As the society evolves, our approach towards the criminal justice must also evolve. There is a possibility that in the future, there may be developments in the legal system that will make mediation the primary dispute resolution option for resolving certain types of criminal cases.

In order to move to that extent, India must severely adopt Victim Offender Mediation because many of its aspects have been documented to have occurred in India much prior to the onset of the modern day judicial system. In India, it is very unfortunate that crimes occur due to unfortunate circumstances, instances and habits. Since VOMs are along the lines of psychological therapy, adopting it and slowly bringing it into the statute books of the criminal laws themselves would make it much better, thereby making it a part of the law and therefore the results of the mediation can be enforced by a court of law. The light at the end of the tunnel is fast nearing, or to be more precise we are approaching it. Implementation of the initiative as mentioned above and other such initiatives would enrich the quality of criminal jurisprudence in India.